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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 659 of 1992

with

CRIMINAL APPEAL No 660 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Nos. 1 to 5 No

STATE OF GUJARAT

Versus

JOSHI FORMULABS PVT.LTD.

Appearance:

MR ND GOHIL, APP. Appellant

MR KV GADHIA for Respondent No. 1, 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision:01/12/2000

COMMON JUDGEMENT

1. Both these appeals are filed by the State against the order of acquittal dated 13.01.1992 passed by the JMFC, Rajkot acquitting the accused for the alleged offence punishable under section 18 of the Minimum Wages Act,1948 (herein after referred to as 'the Act') read with rules 26(A) 26(2) & 25(2) of Gujarat Minimum Wages Rules,1961 (for short 'Rules').

2. The case of the prosecution is that when the complainant visited the factory premises of accused no.1 which is a Private Limited Company on 16.10.1987 he found that the following offences were committed by accused no.1, the Limited Company and accused no.2 its Director.

[i] Accused did not maintain Visit Book and thus violated Rule 26(A) of the Rules.

[ii] Accused did not give pay slips to the workers and thus violated Rule 26(2) of the Rules.

[iii] Accused did not maintain overtime register in the prescribed form and thus violated rule 25(2) of the Rules.

3. According to the prosecution, the case of the accused is governed by entry no.45 of the Schedule which is to be read with provisions of section 2(g) of the Act. Section 2(g) of the Act reads as under :

"Interpretation. - In this Act, unless there is anything repugnant in the subject or context, -

xxx xxx

"(g) 'Scheduled employment' means any employment specified in the schedule or any process of work forming part of such employment."

In light of the aforesaid definition of scheduled employment, one has to look to the schedule and entry no.45 of the schedule reads " employment in plastic industries".

4. The defence of the accused is that they are not governed by the provisions of the Act in as much as they do not fall within the aforesaid entry and in absence of

the scheduled employment as defined in section 2(g) of the Act, the provisions of section 3, by virtue of which an appropriate Government becomes entitled to fix minimum rate of wages, cannot come into play. It is, therefore contended, that in such circumstances, if the provisions of the Act and the Rules thereunder cannot apply to the accused, there is no question of any violation or default on the part of the accused and as such the case of the prosecution must fail.

5. The case putforward by the prosecution is that on the day of visit by the complainant 91 workers were employed by the accused and accused no.1 i.e. Limited Company is carrying on the business of manufacturing plastic refills and ink in ballpen. That as the accused was manufacturing empty plastic refills from High Density Polythene Granules, it would fall within entry no.45 of the schedule being 'plastic industries`. That such refill pipes were thereafter filled with ink and bras tips were fitted and thereafter completed refills were packed in a paper board.

6. As against the aforesaid case putforth by the prosecution, the say of the defence was that out of 91 labourers employed by accused no.1, only 2 labourers were involved in the manufacture of hollow plastic refills while remaining 89 labourers were involved in the manufacture of ink, testing laboratory, manufacture of brasstips, assembling and packing in paperboard such manufactured refills. That, out of the total expenses for the purpose of manufacture, 90% of the expenses are towards manufacture of ink, brasstips and packing materials while only 10% is incurred for manufacture of hollow plastic refil pipes. Thus, in the facts and circumstances of the case, the accused company cannot be stated to be falling within entry of 'plastic industries` and in absence of applicability of the schedule the provisions of the Act also cannot be made applicable to the company. The accused has relied upon the decision of this Court in the case of Shri Prakash Textiles Vs. State of Gujarat, 1982 (2) GLR 392. In the said decision, it is laid down that an entry must be read so as to show that any of the processes as mentioned in the entry are carried on as part and parcel of such industry and if a person is carrying on a business wherein some part of the process involves activity falling within such industry it cannot be termed as a scheduled employment unless it is further shown that such processing is an integral part of the main industry.

7. The Tribunal has recorded a finding of fact that

in the manufacture process carried on by the accused in the manufacture process carried on by the accused of such ink which is manufactured 90% of the stock of ink is sold outside while only 10% of ink is retained for the purposes of filling the empty plastic refills manufactured by the accused company. Moreover, for testing the quality of the ink there is a laboratory and for the purposes of packing refills the packing material is prepared from the paper board and therefore it cannot be said that the accused company is involved in manufacturing plastic or plastic items or plastic material and the manufacture of ballpen refil cannot be said to be integral part of plastic industries as specified in entry 45 of the schedule. The JMFC, Rajkot has therefore, for the aforesaid reasons held that it cannot be stated that the provisions of the Minimum Wages Act and the Gujarat Minimum Wages Rules are applicable to the accused and as such they are not obliged to observe the requirements laid down under the said Act and the Rules, and if that is so, it cannot be stated that they have committed any offence punishable under section 22A of the said Act.

8. On behalf of the respondent in the present appeal, learned Counsel Mr.Gadhia has relied upon the Supreme Court decision in the case of Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Mfg. Co. and Another, reported in 1962 I LLJ Pg.427. Under the provisions of the Provident Fund Act, in section 1(3)(a) of the said Act, the expression used is "engaged in any industry specified in schedule I". The Apex Court was called upon to consider whether the expression engaged in any industry specified in schedule -I, would take within its sweep composite factory and it came to the conclusion that the clause engaged in any industry does not mean "exclusively in any industry". It is further laid down that two views are possible : whether the factory which is partially engaged in an industry specified in schedule would satisfy the test, however, small or insignificant may be the extent of its operation in the said industry; and the other view was that the expression engaged in any industry means primarily or mainly engaged in any industry. It is in context of dealing with this controversy that it is observed at page 434 of the said decision as under :

> " It is true that in dealing with the construction of a clause, which is capable of two reasonably possible constructions, it is not easy to make a choice, particularly when both constructions seem to lead to some anomalies. On

the whole, however, we are inclined to take the view that the clause ' engaged in any industry specified in Sch.I' should be interpreted to mean ' mainly engaged in any industry specified in Sch.I'. If a factory is engaged in two industrial activities, one of which is its primary, principal or dominant activity and the other is a purely subsidiary, incidental, minor or feeding activity, then it is the primary or the dominant activity which should determine the character of the factory under S.1(3)(a). This view does not purport to add any word to the section; it merely interprets the relevant expression 'engaged in any industry specified in Sch.I'. When it is said that a person is engaged in any business, it usually means he is engaged mainly or principally in that business; and the same would be the position when the relevant clause refers to an establishment engaged in the specified industry. That is the commonsense view which is consistent with the current and accepted denotation of the words 'engaged in'.

One of the tests which can sometimes be applied is whether the product of the incidental activity is intended for the market or exclusively for use by the factory in its other department only. If the answer to this question is that the said product is sent out in the market for sale, then the activity in question cannot be treated as incidental. In such a case, it may be said that the factory is engaged in both the activities and as such, it is engaged in the industry specified in Sch.I. But the test of sending the product in the market cannot be treated as decisive or even very significant because the definition of the word 'manufacture' given in S.2(1A) shows that a commodity may be produced by the factory as such for sale, transport, delivery or disposal as for its own use. Therefore, the [fact that a commodity is produced only for the use of the factory in its other department may not necessarily show that the activity which leads to the production of the said commodity is not the main activity of the factory.

If a factory is engaged simultaneously in different industrial activities and one of these is in relation to an industry specified in Sch.I, then it can be said that the factory is engaged in the industry specified in Sch.I. The fact

that the factory is engaged in other industrial activities will not necessarilly take it out of the purview of S.1(3)(a). The broad test which may safely be applied in dealing with this question is; is the factory engaged in the industry specified in Sch.I from a business point of view ? and the answer to this question would generally give a satisfactory solution to the problem posed by S.1(3) (a). Whether or not a factory is engaged in any industry specified in Sch.I would, thus, be a question of fact to be determined in the facts and circumstances of each case. That appears to be the view taken by Balkrishna Ayyar, J., in the Madras Pencil Factory v. Regional Provident Fund Commissioner (1959-I L.L.J.262) and with that view we are in general agreement".

9. In the present case the following facts have been found by the Trial Court and remain uncontroverted :

[i] That 90% of manufacturing process involves production of ink;

[ii] Out of this production of ink 90% of stock is sold outside, and only 10% balance stock is utilised for self-consumption;

[iii] That out of total manufacturing expenses 90% relate to production of ink, brass tips and packing materials, while only 10% balance expenses are incurred for manufacture of hollow plastic pipes; and

[iv] Out of 91 labourers employed, 89 are engaged in manufacture of ink, brass tips, in testing laboratory, assembling and packing while only 2 are engaged in production of hollow plastic refills.

Thus, applying the tests laid down by the Supreme Court it can be stated that (a) the accused company is not primarily, mainly, principally or dominantly engaged in plastic industry; (b) nor is it exclusively engaged in 'scheduled employment'; and (c) nor is it engaged in a industry specified in Sch.I from a business point of view and hence the provisions of the Minimum Wages Act and Rules thereunder are not applicable to the present case.

10. Considering that the provisions of Sec.1(3)(a) of the Provident Fund Act and Sec.2(g) of the Act are similar, in view of the aforesaid ra
Apex Court it can be stated that the conclusion of the Trial Court in acquitting the accused from the alleged offence was correct and justified and the decision was in consonance with what is laid down by the Apex Court.

11. I have heard the learned Counsel of both the sides and I find that there is no justifiable reason to interfere with the impugned order of acquittal passed by the lower Court and the same is hereby confirmed. Both the appeals thus fail and are accordingly dismissed. Registry to return all the relevant records and proceedings of these cases.

Sd/-
(D.A.Mehta,J)

m.m.bhatt